

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

OK TO ENTER: /JW/ (08/20/2008)

Dave R. Dehart

Group Art Unit: 2151

Serial No.: 10/659,594

Examiner: Walsh, John

Filed: September 10, 2003

Docket No. 10015846-1

For: **Systems and Methods for Providing Support to A User Regarding Print Quality**

REPLY BRIEF RESPONSIVE TO EXAMINER'S ANSWER

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The Examiner's Answer mailed June 13, 2008 has been carefully considered. In response thereto, please consider the following remarks.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 08-2025.

REMARKS

The Examiner has provided in the Examiner's Answer various responses to points made in Applicant's Appeal Brief. Applicant addresses those responses in the following.

1. Executing a Printing Device Driver on a Computer

In Applicant's Appeal Brief, Applicant identified that Venkatraman does not teach "executing a printing device driver on a computer". Instead, Venkatraman discloses a system in which a device, such as a printer, serves web pages to a web browser that can be used to access functions of the device.

On page 7 of the Examiner's Answer, the Examiner argues that he has given the term "printing device driver" the "broadest reasonable interpretation" and that, accordingly, Venkatraman's web browser can be considered to be a printing device driver. Applicant emphatically disagrees. Specifically, the Examiner's interpretation of the term "printing device driver" directly contradicts the well-established plain and ordinary meaning of the term as used in the computing arts. As expressed in the Appeal Brief, the term "driver" as used in the computing art refers to a program on a computer that translates between a program on the computer and a separate device. Therefore, a driver accepts generic commands from a program on the computer and translates them into specialized commands for the device. As defined by Webopedia, an online dictionary for computer and Internet technology, the term "driver" refers to:

A program that controls a device. Every device, whether it be a printer, disk drive, or keyboard, must have a driver program. Many drivers, such as the keyboard driver, come with the operating system. For other devices, you may need to load a new driver when you connect the device to your computer. In DOS systems, drivers are files with a.SYS extension. In Windows environments, drivers often have a.DRV extension.

A driver acts like a translator between the device and programs that use the device. Each device has its own set of specialized commands that only its driver knows. In contrast, most programs access devices by using generic commands. The driver, therefore, accepts generic commands from a program and then translates them into specialized commands for the device.

See <http://www.webopedia.com/TERM/d/driver.html>.

In the case of a printing device driver, the driver accepts generic commands from programs on the computer and translates them into commands that a printing device can use to generate a hard copy output. For example, if one creates a document in Microsoft WordTM, the printing device driver would translate the document into a form that can be understood by the printing device to enable printing of the document. As is well known to both persons of skill in the computing arts, as well as nearly anyone who accesses the Internet, a web browser, on the other hand, is simply a program that enables web pages to be downloaded for viewing and manipulation on a separate computer.

As was also expressed in Applicant's Appeal Brief, Applicant's disclosure, which must be used to interpret Applicant's claim terms, provides a definition that is consistent with that described above. In particular, Applicant's specification states:

The drivers 216 comprise code that acts in the capacity of translators between programs that execute on the user computer 102 (e.g., user applications 212) and the peripheral device for which the driver is designed. The drivers 216 therefore accept generic commands from a program, and then translate the commands into specialized commands for the peripheral device.

Applicant's specification, page 5, lines 17-21.

In view of the fact that the Examiner's interpretation of the term "printing device driver" contradicts the well-established plain and ordinary meaning of that term as used in the computer arts and further contradicts the definition provided by Applicant's specification, it is clear that, while broad, the Examiner's interpretation is certainly *not* "reasonable."

Also on page 7 of the Examiner's Answer, the Examiner argues that Venkatraman's web browser satisfies Applicant's claims "printing device driver" because the browser "performs the corresponding claimed functions." In reply, Applicant notes that 35 U.S.C. §102 requires a prior art reference to explicitly or inherently teach each and every limitation. The teaching of a mere functional equivalent of an explicitly claimed feature is not sufficient. By way of example, if Applicant explicitly claimed a motorcycle and the prior art reference taught a car, one could argue that the car is the functional equivalent of the motorcycle given that they both provide transport. Clearly, however, the reference could not be said to teach the claimed motorcycle. In similar manner, the Venkatraman reference cannot be said to teach the claimed printing device driver.

2. Printing Device Driver Program Stored on the Computer

In Appeal Brief, Applicant also identified that Venkatraman does not teach a printing device driver “comprising a program stored on the computer that is used to control operation of a peripheral device separate from the computer”. Simply stated, Venkatraman does not describe a computer or computer system that stores a driver program that is used to control the device 10.

Applicant notes that the Examiner has provided no response to the above point in the Examiner’s Answer other than to again state that Venkatraman teaches a web browser. Applicant acknowledges that Venkatraman teaches a web browser. However, Applicant reiterates that a web browser clearly is not a “printing device” driver as the term is used in the computer arts and Applicant’s own disclosure.

3. Presenting a Link to Support in the Printing Device Driver User Interface

Applicant further identified in the Appeal Brief that Venkatraman does not teach presenting a link to print quality support “in the printing device driver user interface”. Although Venkatraman may be said to generally teach presenting a link in a web page served by the device 10, such a link is not provided in a “printing device driver user interface”, i.e., an interface supported by a “printing device driver” that is “stored on the computer”.

Applicant notes that the Examiner has provided no response to Applicant’s above point in the Examiner’s Answer other than to again state that Venkatraman teaches a web browser.

4. Presenting a Link in Association with a “Color Tab”

As stated in the Appeal Brief, Applicant believes that Applicant's dependent claims are not anticipated by Venkatraman for the same reasons that Applicant's independent claims are not anticipated by Venkatraman. With particular regard to dependent claims 4 and 21, Applicant submits that the Examiner's interpretation of the term “color tab” as meaning a colored tab as opposed to a tab that is associated with options pertaining to the color of printed documents clearly contradicts Applicant's disclosure, which must be considered when interpreting Applicant's claim terms.

5. Presenting Information Regarding Printing Device Operation and Troubleshooting Tips

Applicant reiterates that Applicant's dependent claims are not anticipated by Venkatraman for at least the same reasons that Applicant's independent claims are not anticipated by Venkatraman. Regarding dependent claims 7 and 22, Applicant further asserts that Venkatraman does not in fact teach "presenting information regarding at least one of proper printing device operation and troubleshooting tips." As stated in the Appeal Brief, Venkatraman says nothing of the proper way to operate the device or troubleshooting tips. In reply to the Examiner's argument that such information would be inherent in the information that Venkatraman's printer provides, Applicant notes Venkatraman's discussion of "status information" and "printer support functions," which Venkatraman describes as information about "printer service contracts," do not inherently require the provision of proper printing device operation or troubleshooting tips. As is well-established in the law:

Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency. See *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

Scaltech Inc. v. Retec/Tetra, L.L.C., 178 F.3d 1378, 51 USPQ2d 1055 (Fed. Cir. 1999), Revising, 156 F.3d 1193, 48 USPQ2d 1037 (Fed. Cir. 1998). Furthermore, the Federal Circuit has noted:

Under the principles of inherency, if the prior art *necessarily functions* in accordance with, or includes, the claimed limitations, it anticipates.

Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 51 USPQ2d 1943 (Fed. Cir. 1999) (emphasis added). Clearly, Venkatraman's system does not "necessarily function" to provide information regarding proper printing device operation or troubleshooting tips.

CONCLUSION

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,



David R. Risley
Registration No. 39,345